

NEW HAMPSHIRE BAR ASSOCIATION

Representing Clients Through Interpreters

Ethics Committee Advisory Opinion #2009-10/02

ABSTRACT:

A lawyer representing a client who needs an interpreter should, ideally, engage the services of a qualified, impartial third party to ensure compliance with Rule 1.1, Rule 1.4 and Rule 1.6.

QUESTION:

What are the ethical obligations of an attorney representing a client with whom the attorney cannot communicate directly in a language understood by the client?

BACKGROUND:

An attorney has inquired whether he may ethically represent a client with whom he cannot communicate directly without the assistance of an interpreter.

RESPONSE:

This inquiry implicates an attorney's obligations relating to competence (Rule 1.1), client communications (Rule 1.4) and confidentiality of information (Rule 1.6).

An attorney's inability to communicate directly with a client in a language understood by the client does not necessarily preclude the attorney from ethically representing the client. Indeed, communication problems can arise even where the attorney and the client speak the same language. In all cases, attorneys must take steps to ensure that the client is provided with competent representation, that communications with the client are adequate to provide such competent representation, and that the confidentiality of the client's information is protected. Where an attorney cannot communicate directly with the client in a language understood by the client, the attorney may ethically represent the client if the attorney uses a qualified, impartial interpreter to conduct adequate communications with the client, and takes appropriate steps to protect the client's confidential information.

An attorney's obligation to provide competent representation to his or her clients requires, among other things, that the attorney "gather sufficient facts regarding the client's problem from the client" and that the attorney "develop a strategy, in consultation with the client, for solving the legal problems of the client." Rule 1.1(c)(1) & (3). The attorney's obligation to communicate with his or her clients requires, among other things, that the attorney "reasonably consult with the client about the means by which the client's objectives are to be accomplished" and that the attorney "explain the legal and practical aspects of a matter and alternative courses of action to the extent that such explanation is reasonably necessary to permit the client to make informed

decisions regarding the representation.” Rule 1.4(a)(2) & (b). These obligations require that the attorney and the client be able to exchange information and understand one another.

When the attorney cannot communicate directly and fluently with the client in a language that the client can understand-whether the inability to engage in direct communication is because the attorney and the client do not speak the same language, or because either the client or attorney is deaf or hearing impaired-the attorney must make use of the services of a qualified, impartial interpreter. Ideally, the attorney would accomplish this by associating with a bilingual attorney, working with a bilingual employee or staff member who can interpret communications between the attorney and client, or utilizing a commercial or community interpreter service. While this is not always possible, attorneys are cautioned that using relatives or friends of clients as interpreters carries substantial risks. Such interpreters may have a personal interest in the outcome of the representation and, therefore, their interpretation may be biased. Often, cultural and social factors, or family dynamics can interfere with the accuracy of such interpreters’ translation. Attorneys should be aware of these risks, and should take steps that are reasonable under the circumstances to ensure that the selected interpreter is appropriate. For example, attorneys should watch for cues that indicate that the interpreter is speaking for the client or filtering the attorney’s statements rather than impartially conveying the communications.

Regardless of who is selected as an interpreter, attorneys should satisfy themselves that the interpreter has the capacity to comprehend the legal concepts being discussed and can convey them accurately. Further, attorneys should take steps to ensure that the client comprehends the legal concepts and advice presented, and that the attorney understands the information and ideas conveyed by the client. For example, attorneys should allow for additional time for client meetings, and ask confirming questions to assure that information is being exchanged accurately and completely.

The presence of any interpreter does not diminish the attorney’s duty to maintain the confidentiality of client information. Rule 1.6; see also Arizona Bar Association Ethics Opinion 97-05. Attorneys representing clients through interpreters should ensure that the interpreter has a clear understanding of the obligation to keep the client’s communications confidential. See Utah State Bar, Ethics Advisory Opinion 96-06. Attorneys should also be mindful of whether there is a waiver of the attorney-client privilege when a non-employee interpreter is used, however, such issues involve questions of law, rather than of ethics, and are therefore beyond the scope of this opinion.¹

It is not the intention of the Ethics Committee in issuing this opinion to in any way discourage attorneys from representing clients with whom they cannot communicate directly in a language understood by the client. Rather, it is the intention of the Ethics Committee to provide attorneys with some helpful guidance for meeting this important need for legal services consistent with their ethical obligations.

ENDNOTE:

[1] For more information on the attorney-client privilege and communications between attorneys and their clients through interpreters, see, e.g., Restatement Third, The Law Governing Lawyers, Sec. 70. With regard to privileged communications through interpreters for the deaf, see RSA 521-A:1L

NH RULES OF PROFESSIONAL CONDUCT:

Rule 1.1

Rule 1.4

Rule 1.6

SUBJECTS:

Interpreters

Client Communication

Competence

Confidentiality

- **By the NHBA Ethics Committee**

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